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February 18, 2004

Magalie Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**RE: Notice of Application Ready for Environmental Analysis and Soliciting  
Comments, Recommendations, Terms and Conditions, and Prescriptions  
Borel Hydroelectric Project  
FERC Project No. 382-026**

Dear Ms. Salas:

American Whitewater Affiliation and the Sierra Club River Touring Chapter hereby file electronic comments on the Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions for the Borel Hydroelectric Project, FERC Project No. 382-026 on the Kern River, California.

Copies of this document have been served on all parties listed in the FERC's service list, available on the FERC website (see attached service list).

Sincerely,

John T. Gangemi  
Conservation Director  
American Whitewater  
482 Electric Avenue  
Bigfork, MT 59911  
jgangemi@digisys.net

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

<hr/>	)	Borel Hydro Project,
Borel Hydroelectric Project,	)	FERC No. 382-026
Notice of Application Ready for Environmental	)	
Analysis and Soliciting Comments	)	
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**COMMENTS**

**ON BEHALF OF THE AMERICAN WHITEWATER AFFILIATION  
AND THE SIERRA CLUB ON THE LICENSE APPLICATION  
FOR THE BOREL HYDROELECTRIC PROJECT  
FERC PROJECT NO. 382**

**I. Introduction**

American Whitewater Affiliation (American Whitewater) and the Sierra Club River Touring Chapter (Sierra Club) hereby request leave to file comments on Southern California Edison's (SCE) application for new license for the Borel Hydroelectric Project, FERC No. 382, located on the Kern River in Kern County, California. American Whitewater and the Sierra Club have been actively involved in this relicense proceeding. American Whitewater filed comments on SCE's Initial Consultation Document on September 11, 2000. American Whitewater filed comments on the Draft License Application on January 30, 2003. American Whitewater and the Sierra Club filed a joint Motion to Intervene and Additional Information Request on April 23, 2003. American Whitewater filed comments on the FERC scoping document on July 22, 2003. In addition American Whitewater and the Sierra Club have participated in numerous stakeholder meetings for this relicense proceeding. American Whitewater and the Sierra Club played instrumental roles in the partially completed Whitewater Controlled Flow Study on the Borel Bypass reach on July 15, 2003.

**II. The Parties**

**American Whitewater Affiliation**

American Whitewater Affiliation (hereinafter known as American Whitewater) is a national non-profit 501(c)3 river conservation and recreation organization founded in 1954. We have over 8,000 members and 160 canoe club affiliates, representing approximately 180,000 whitewater paddlers across the nation. American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. As a conservation oriented paddling organization, American Whitewater has a strong interest in the future of the Kern River and, therefore, the relicensing of the Borel Hydroelectric Project. A significant percentage of our membership resides in California—a short driving distance from this project for weekend recreation. Federal actions that affect flow and access to the river may potentially adversely impact opportunities for American Whitewater members to utilize the river resource. American Whitewater's Conservation Director and several members have been actively engaged as stakeholders in this relicense proceeding. Therefore, American Whitewater has a direct interest in the Borel relicense proceeding on the Kern River. American Whitewater's interest cannot be met through any other party to this proceeding.

### **Sierra Club**

The Sierra Club has over 700,000 members. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth, practice and promote the responsible use of the earth's ecosystems and resources, and to educate and enlist humanity to protect and restore the quality of the natural and human environment. The local Angeles and Kern-Kaweah Chapters of the Sierra Club have over 50,000 members actively using the Kern River and its watershed.

The Angeles Chapter of the Sierra Club has a River Touring Section headquartered in Los Angeles that is specifically chartered to engage in local river conservation and recreation. The River Touring Section provides for the exploration and enjoyment of our lakes, rivers and coastal bays by sponsoring weekend canoe, raft or kayak trips and instructional programs in basic skills and moving water techniques. The River Touring Section also encourages concern for the preservation of our water resources for the use and enjoyment of present and future generations. The River

Touring Section members are primarily boaters of class II-III skill level who actively use the Borel Reach of the Kern River. It is important to note that the majority of our members have skill sufficient only to allow them to boat the Borel Reach and cannot negotiate the more difficult class IV section of the Kern River below the Borel powerhouse.

As a conservation organization actively engaged in boating activities and education on the Kern River and especially the Borel bypassed reach, the Sierra Club has a strong interest in the future of the Kern River and the relicensing of the Borel Hydroelectric Project. Federal actions that affect flow and access to the river may potentially adversely impact opportunities for Sierra Club members to utilize the river resource. Therefore, the Sierra Club has a direct interest in the relicensing proceedings for the Borel Hydroelectric Project.

### **III. Comments**

#### **Whitewater Resources**

The Kern River between Isabella Dam and Borel powerhouse contains eight miles of Class II-III whitewater. There are four designated river access points managed by resource agencies for river recreation: 1) Slippery Rock; 2) BLM South; 3) BLM at Keyesville Bridge; and 4) Sandy Flat. In addition there are numerous dispersed river access points in this same reach. This river reach between the dam and powerhouse is utilized by both private and commercial boaters. When there is sufficient flow in this bypassed reach resulting from unpredictable spill commercial boaters tend to do two-day overnight trips linking into the reach below the powerhouse for an 18-mile river trip. Commercial whitewater boating is a significant component of the local economy.

The Borel Hydroelectric Project's combination of diversion structure, canal and powerhouse significantly alters the instream flow in the eight-mile natural river channel below Isabella Reservoir. Accordingly, this flow alteration limits downstream river recreational opportunities and in particular whitewater boating. Whitewater boaters are especially sensitive to flow, which is often a key determinant in whether people can take

a trip, what level of challenge it will provide, and the type of equipment needed. The Final License Application fails to quantify the boatable flow range, i.e., the range between minimum acceptable and optimum flows. Knowledge of the boatable flow range is absolutely necessary in the environmental analysis. Without knowledge of the boatable flow range it is impossible to hydrologically assess project impacts on whitewater opportunities or prescribe mitigation measures.

The Final License Application cites 400 cfs as a minimum acceptable flow for commercial boaters and 600 to 900 cfs for private boaters. These flow ranges are based on flawed survey methods. Resource agencies and stakeholders have challenged the validity of these flow ranges. The FERC should not use these flow ranges in their environmental analysis. Due to the criticisms from resource agencies and stakeholders, SCE has promised to complete a whitewater controlled flow study in June 2004. The FERC should utilize the results of the Whitewater Controlled Flow Study in their analysis of project impacts on whitewater opportunities.

### **Recent Cooperative Efforts**

The Borel License Application presented to the FERC in February 2003 does not reflect recent cooperative efforts between SCE, resource agencies and stakeholders. Since the drafting of this document in the fall of 2002 a number of notable “agreements” have been reached between SCE and stakeholders in this proceeding. Most notable for American Whitewater and the Sierra Club is SCE’s flow augmentation proposal and commitment to undertake a whitewater controlled flow study in July 2003 (Borel Final Application, Vol. 2 pg. 6). Because of the pending FERC license filing deadline, SCE was unable to make all the necessary editorial changes to the Final License Application documenting the flow augmentation proposal and proposal for the Whitewater Controlled Flow Study. These agreements and commitments were largely limited to the executive summary. As a result much of the whitewater documentation and discussion contained in Exhibit E is antiquated. For example, much of the whitewater analysis and recommendations in Exhibit E are based on SCE’s recreation surveys and Sequoia National Forest (SNF) manifests. At the October 2, 2002 stakeholder meeting hosted by

SCE it became apparent that the recreation surveys and SNF manifest data were not sufficient for analysis and developing whitewater PM&E's for the Borel project. The conclusions contained in the Final License Application are based almost entirely on the flawed survey data and SNF manifest data.

Furthermore, it became apparent that stakeholders were unable to evaluate the adequacy of SCE's proposed augmentation plan until a Whitewater Controlled Flow Study identifying the minimum acceptable and optimum flows was conducted. As a result, the present license application submitted to the FERC in February 2003 lacks critical information about whitewater resources.

In the summer of 2003, American Whitewater, Sierra Club and resource agencies worked collaboratively with SCE to gather the necessary information to finalize SCE's flow augmentation proposal. In July 2003 SCE initiated a Whitewater Controlled Flow Study. That study will be completed in June 2004. American Whitewater and the Sierra Club request the FERC include the results of these cooperative efforts in their environmental analysis.

### **Final License Application Contents**

Despite the cooperative atmosphere that has developed between whitewater interests and SCE since the October 2, 2002 stakeholder meeting, SCE's license application fails to provide documentation on the range of boatable flows for the bypass reach below Isabella Reservoir and the Borel Powerhouse. During pre-application consultation for this project several agencies and stakeholders including American Whitewater and the Sierra Club notified SCE through comments on the Initial Consultation Document (ICD) that a Whitewater Controlled Flow Study was necessary to reach an objectively based management decision for whitewater recreation opportunities in the Borel reach between Isabella Dam and the Borel powerhouse. SCE on the other hand determined that due to the local expertise and commercial use of the reach that a Whitewater Controlled Flow Study was not necessary (Borel Draft License application, p. 6-36 and 6-40, Borel Final License Application p. 6-40). Instead of conducting a Controlled Flow Whitewater Study, SCE conducted recreational surveys in the summers

of 2001 and 2002. These surveys were designed in part to identify preferred flows for whitewater recreation in the Borel bypass reach. Through the course of second stage consultation, the stakeholder group, including American Whitewater and Sierra Club, repeatedly directed SCE to conduct a Whitewater Controlled Flow Study as the recommended method for identifying minimum acceptable and optimum flows for whitewater recreation in the bypass. The license application is deficient as a result of SCE's insistence to apply survey methods rather than conduct the appropriate Whitewater Controlled Flow Study. SCE's license application fails to present a defensible range of boatable flows supported by scientific study.

The data gathered in the Licensee's survey method proved contradictory. In addition, surveyors failed to survey a sufficient number of private boaters with comparative knowledge of desirable flows. The Licensee's survey team primarily interviewed commercial raft passengers. Commercial passengers lack exposure to a variety of flow levels and consequently lack experience and knowledge for flow comparisons and flow recommendations.

### **Flow Augmentation Proposal**

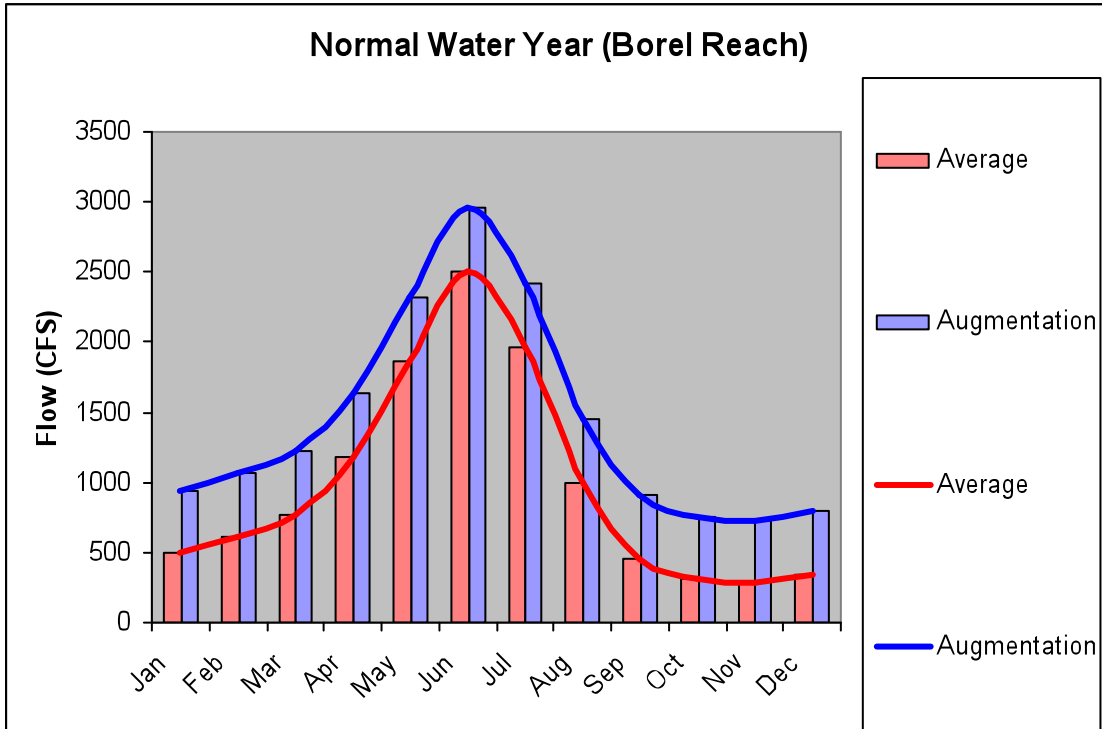
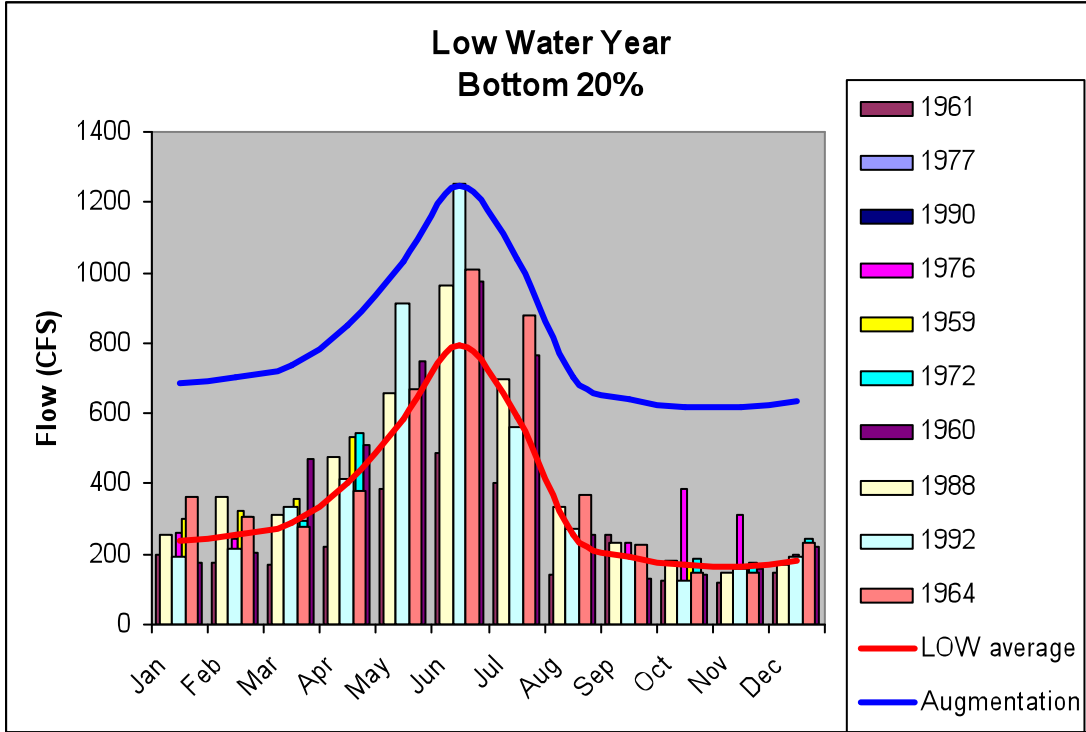
The Licensee included a proposal in the license application for augmenting flows in the Kern River below Isabella Dam so that "400 cfs would be available at the Keyesville Bridge seven days a week between the hours of 8:00 AM and 2:00 PM Memorial Day through Labor Day.... (Borel Final License Application, Exhibit E, Vol. 2, pg. 6-72)" American Whitewater and the Sierra Club support the concept of flow augmentation to create more reliable boating flows in the diverted reach. American Whitewater and the Sierra Club object to SCE's assumption that 400 cfs is the minimum acceptable boating flow. The 400 cfs minimum boating flow was derived from SCE's survey efforts. At the October 2, 2002 stakeholder meeting the commercial outfitters in attendance challenged the validity of this number. Clearly there is uncertainty regarding the minimum acceptable boating flows in the Kern River between Isabella Dam and Borel powerhouse. The 400 cfs target flow might be below the minimum acceptable flow. The proposed 400 cfs instream flow is not based on objective study and therefore

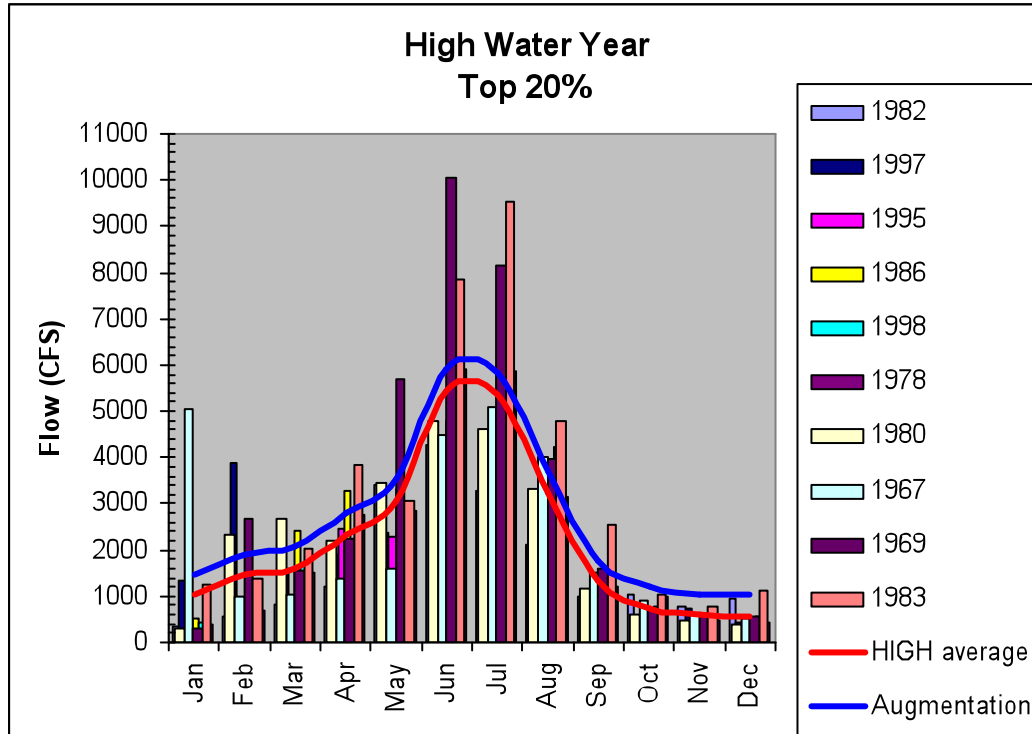
may potentially not mitigate impacts on whitewater recreation. In light of stakeholder concerns, SCE concurs there is considerable uncertainty and has promised to conduct a Whitewater Controlled Flow Study in the summer of 2003.

Kris Schmidt, Sierra Club River Touring Chapter, has drafted an augmentation proposal similar to SCE's but with some adjustments on the range of spill flows triggering augmentation and the months to implement augmentation. Kris adjusted the augmentation trigger points and timing in the following manner: SCE would augment flows in the bypassed reach when the spill flow was between 200 and 1000 cfs resulting in flows of 650-1450 cfs for the months of July through October. American Whitewater supports this modification in its raw form recognizing the need to refine the actual range of spill flows warranting augmentation upon completion of the Whitewater Controlled Flow Study.

Kris analyzed monthly hydrologic data for the Borel reach on the Kern River based upon monthly data from the Army Corp of Engineers. This data is available back to 1930. Kris grouped the data by water year type: The top ten wet years (20%) and the bottom ten dry years (20%) since dam construction (1953) and averaged them to get data for dry, average, and wet years. Based on the SCE proposal for augmented releases to achieve 400 cfs, Kris superimposed an augmentation of 450 cfs (maximum available without shutting down the plant) onto the plots. In wet years, augmentation is hardly necessary. However, in normal water years the augmentation makes a significant difference in boating qualities and number of boating days in August, September and October. In dry years, the 450 cfs augmentation makes the difference between **NO** boating in July, August, September and October and having some whitewater opportunities.







### Water Master

The July 15<sup>th</sup> -16<sup>th</sup>, 2003 Whitewater Controlled Flow Study was prematurely terminated due to lack of cooperation from the “Water Master” operating the release gates at Isabella Reservoir. The water master refused to release water into the natural river channel claiming that the authority to divert water into the natural river channel rested with him. In the water master’s opinion SCE could only request the water master direct their 605 cfs water right into their canal system but not into the river channel. The water master’s act of defiance challenges SCE’s water right and ultimately the FERC’s authority in hydropower licensing. In this case, the water master has refused to direct a specific volume of water into the natural river channel for relicensing studies. Will the water master refuse to comply with minimum instream flow requirements in the new FERC license thereby challenging FERC’s authority under the Federal Power Act? Or will the water master selectively comply with license conditions based on his political leanings? The FERC clearly needs to establish which regulatory agency has authority over instream flows prescribed in license conditions.

The water master opposes SCE's whitewater flow augmentation proposal claiming that re-directing flows from the canal to the natural river channel will disrupt the timing of water delivery to irrigation diversions approximately 42 river miles downstream. In our joint Additional Information Request filed April 22, 2003 American Whitewater and the Sierra Club requested the FERC require a study investigating changes in water stage heights at the irrigation withdrawal point resulting from re-direction of water from the canal to the natural river channel. American Whitewater and the Sierra Club again request that the water master's assertions of impacts to irrigation withdrawals be verified through objective study. These investigations are necessary for the FERC to make an informed decision based on an evidentiary record as required by law in this license proceeding.

Section 6.4.13.3 in the Final License Application (Exhibit E, Vol. 2, pg. 6-42) cites correspondence with the water master regarding this issue. The water master claims in part that the "BLM's proposed flow augmentation plan scenario is not acceptable to downstream water users as it would be costly to reregulate the water downstream of the last powerplant and would also cause a loss of water to various water right holders (Williams 2003)." This statement is opinion rather than fact. Mr. Williams fails to cite any studies supporting his statement. It's hard to believe that redirecting 450 cfs for four hours between the canal and the natural river channel will impact river stage height particularly given the fact that the irrigation diversion is 42 miles downstream, passes through multiple dams and powerhouses enroute and is only a fraction of the overall discharge in the river.

In light of the recent failed attempt to get the Isabella Dam water master to release requested flows for the Whitewater Controlled Flow Study, the FERC should include in their environmental analysis an examination of the following: 1) List of appropriated water rights including volumes, timing, and point of diversion in the Kern River; 2) Longitudinal river miles between Isabella Dam and downstream points of diversion for each consumptive water right; 3) Comparative analysis of the travel time for a given block of water (450 cfs) in the Borel canal verses the natural river channel below Isabella

Dam. Cooperation and collaboration among the various water rights holders in the Kern River is critical for implementing some of the Licensees proposed mitigation measures in the License Application. FERC staff's ability to provide objective analysis of these issues will be critical for resolving these matters.

### **V. Conclusion**

American Whitewater and Sierra Club request the FERC incorporate recent cooperative agreements and pending studies into the environmental analysis for the Borel Hydropower Project, FERC No. 382. SCE's draft Flow Augmentation Proposal will likely need adjustments based on the results of the scheduled June 2004 Whitewater Controlled Flow Study. The FERC must clarify the regulatory body with authority to prescribe and require implementation of instream flows in the Kern River below Isabella Reservoir. The FERC should analyze through objective study claims that flows in the natural river channel will impact water withdrawals in the vicinity of Bakersfield.

Respectfully Submitted

Date: February 18, 2004

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John T. Gangemi,  
Conservation Director, American Whitewater

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Kris Schmidt,  
Conservation Chair, Sierra Club River Touring Section

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18<sup>th</sup> day of February 2004, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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Carla R. Miner

**Service List for P-382-000 - Southern California Edison Company**

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RALPH B. JORDAN KERN, COUNTY OF California KERN COUNTY ADMIN. & COURTS BLDG. 1415 Truxtun Ave Bakersfield, CA 93301-5215 UNITED STATES	
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